

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
Oakwood Homes Corporation, et al.,	)	Case No. 02-13396 (PJW)
	)	
Debtors.	)	Jointly Administered
	)	
<hr style="width: 40%; margin-left: 0;"/> OHC Liquidation Trust,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 07-0799 (JJF)
	)	
Credit Suisse (f/k/a Credit Suisse First Boston, a	)	
Swiss banking corporation), Credit Suisse	)	
Securities (USA), LLC (f/k/a Credit Suisse First	)	
Boston LLC), Credit Suisse Holdings (USA), Inc.	)	
(f/k/a Credit Suisse First Boston, Inc.), and Credit	)	
Suisse (USA), Inc. (f/k/a Credit Suisse First Boston	)	Re: Civil Docket No. 100
(U.S.A.), Inc.), the subsidiaries and affiliates of	)	
each, and Does 1 through 100,	)	
	)	
Defendants.	)	
	)	
<hr style="width: 40%; margin-left: 0;"/>	)	

***\*\*CONFIDENTIAL – FILED UNDER SEAL SUBJECT TO PROTECTIVE ORDER\*\****

**DECLARATION OF WHITMAN L. HOLT  
IN SUPPORT OF PLAINTIFF'S ANSWERING BRIEF IN OPPOSITION TO  
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, Whitman L. Holt, declare as follows:

1. I am over 18 years of age, and I have personal knowledge of each of the facts stated in this declaration. If called as a witness, I could and would testify as to the matters set forth below based upon my personal knowledge.

2. I submit this declaration in support of the *Answering Brief in Opposition to Defendants' Motion for Partial Summary Judgment* filed by the OHC Liquidation Trust ("**Plaintiff**") in the above-captioned proceeding.

3. I am an attorney at the law firm of Stutman, Treister & Glatt, P.C., special counsel for Plaintiff in this proceeding.

**Depositions-**

4. Plaintiff's counsel deposed Mr. Thomas F. Boland – a proposed expert witness on Defendants' behalf – on March 25, 2008. True and correct copies of relevant excerpts from the transcript of Mr. Boland's deposition are attached hereto as Exhibit "A."

5. Plaintiff's counsel deposed Mr. Thomas Irwin – one of the principal CRM employees involved with Oakwood – on November 8, 2006. True and correct copies of relevant excerpts from the transcript of Mr. Irwin's deposition are attached hereto as Exhibit "B."

6. Defendants' counsel deposed Mr. Douglas R. Muir – a former Oakwood officer, and an individual directly involved with Oakwood's securitization programs – on September 26-27, 2006. True and correct copies of relevant excerpts from the transcript of Mr. Muir's deposition are attached hereto as Exhibit "C."

7. Plaintiff's counsel deposed Mr. Fiachra O'Driscoll – an employee of Credit Suisse and the individual with primary responsibility for, *inter alia*, Oakwood's securitization transactions – on June 29-30, 2006. True and correct copies of relevant excerpts from the

transcript of Mr. O'Driscoll's deposition are attached hereto as Exhibit "D."

8. Defendants' counsel deposed Dr. Alan C. Shapiro – one of Plaintiff's proposed expert witnesses – on September 5, 2007. True and correct copies of relevant excerpts from the transcript of Dr. Shapiro's deposition are attached hereto as Exhibit "E."

9. Defendants' counsel deposed Mr. Myles Standish – a former Chief Executive Officer of Oakwood – on September 21, 2006. True and correct copies of relevant excerpts from the transcript of Mr. Standish's deposition are attached hereto as Exhibit "F."

10. Plaintiff and Defendants' counsel telephonically deposed Mr. Clarence W. Walker – a former member of Oakwood's board of directors – on December 12, 2006. True and correct copies of relevant excerpts from the transcript of Mr. Walker's deposition are attached hereto as Exhibit "G."

**Documents-**

11. Attached hereto as Exhibit "H" is a true and correct copy of an April 17, 2000 e-mail from Jeff Hinshaw, which was produced by Defendants with bates numbers CSFB-00173796 – CSFB-00173797. This document was previously marked as deposition exhibit 56.

12. Attached hereto as Exhibit "I" is a true and correct copy of a January 2, 2001 e-mail from James Xanthos, which was produced by Defendants with bates number CSFB-00485340. This document was previously marked as deposition exhibit 64.

13. Attached hereto as Exhibit "J" is a true and correct copy of a May 17, 2001 e-mail from John Chrystal, which was produced by Defendants with bates numbers CSFB-00482331 – CSFB-00482332. This document was previously marked as deposition exhibit 75.

14. Attached hereto as Exhibit "K" is a true and correct copy of an August 9, 2001 e-mail from Fiachra O'Driscoll, which was produced by Defendants with bates number

CSFB-00014152.

15. Attached hereto as Exhibit "L" is a true and correct copy of a February 19, 2002 e-mail from Fiachra O'Driscoll, which was produced by Defendants with bates number CSFB-00478613. This document was previously marked as deposition exhibit 94.

16. Attached hereto as Exhibit "M" is a true and correct copy of a November 14, 2002 e-mail from Alberto Zonca, which was produced by Defendants with bates number CSFB-00518061. This document was previously marked as deposition exhibit 147.

17. Attached hereto as Exhibit "N" is a true and correct copy of a November 23, 2002 e-mail from Mark Millard, which was produced by Defendants with bates numbers CSFB-00514175 – CSFB-00514177. This document was previously marked as deposition exhibit 130.

18. Attached hereto as Exhibit "O" is a true and correct copy of an "Originator/Service Assessment" prepared after Oakwood filed for bankruptcy, which was produced by Defendants with bates numbers CSFB-00250104 – CSFB-00250114. This document was previously marked as deposition exhibit 112.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 12, 2008, at Los Angeles, California.

A handwritten signature in black ink, appearing to read 'Whitman L. Holt', written over a horizontal line.

Whitman L. Holt

EXHIBIT A REDACTED  
IN ITS ENTIRETY

# **Exhibit "B"**

1

THOMAS IRWIN

2

UNITED STATES BANKRUPTCY COURT

3

DISTRICT OF DELAWARE

4

-----x

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In Re:

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OAKWOOD HOMES CORPORATION,  
et al.,

7

Debtors.

8

Chapter 11

9

Case No. 02-13396 (PJW)

-----x

10

OHC LIQUIDATION TRUST,

11

Plaintiff,

12

v.

ADV. Proc.No. 04-57060 (PJW)

13

CREDIT SUISSE FIRST BOSTON, a  
Swiss banking corporation,

14

CREDIT SUISSE FIRST BOSTON

15

LLC, a Delaware limited  
liability corporation, CREDIT

16

SUISSE FIRST BOSTON, INC.,

17

CREDIT SUISSE FIRST BOSTON  
(U.S.A.), INC., a Delaware

18

corporation and a wholly owned  
subsidiary of CREDIT SUISSE

19

FIRST BOSTON, INC., the  
subsidiaries and affiliates of  
each, and DOES 1 through 100,

20

Defendants.

21

-----x

22

23

November 8, 2006

24

9:04 a.m.

25

1

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1 THOMAS IRWIN

2 Q. Do you know why Mr. Zonca thought you  
3 and Mr. Xanthos and Mr. -- who is Roger Machlis,  
4 actually?

5 A. Internal legal counsel.

6 Q. For a particular department or just  
7 generally?

8 A. CSFB.

9 Q. For a particular business unit or --

10 A. I don't know.

11 Q. Returning to my prior question, do you  
12 have any reason or do you have any understanding  
13 of why Mr. Zonca thought that you and Mr.  
14 Xanthos and Mr. Machlis would find the  
15 definition of eligible receivables to be of  
16 particular interest?

17 MR. OSNATO: Objection as to the form.  
18 You can answer.

19 A. I'm always interested in what the  
20 eligible receivables are in a facility.

21 Q. Why?

22 A. Because it is the component -- it is  
23 the asset side of the transaction.

24 Q. How is that information -- why would  
25 that information be germane upon a bankruptcy



1 THOMAS IRWIN

2 filing of the originator?

3 A. It's always important that the  
4 eligible receivables are the primary risk of any  
5 facility or structure.

6 Q. Can you think of any reason why it  
7 would have been of particular interest on  
8 November 14, 2002?

9 A. If I was going to review the facility  
10 I would want to know exactly what I was  
11 financing.

12 Q. Can you think of any reason why you  
13 were going to review the facility on November  
14 14, 2002?

15 A. There are obviously -- he is  
16 proposing -- he is giving me a sheet for a new  
17 facility, so the fact that he is asking me to  
18 look at it is why I would be looking at it.

19 Q. I'm sorry, where is the sheet for the  
20 new facility? What new facility --

21 A. Huh? I said a sale -- I'm sorry, I'm  
22 saying please enclose the current sale -- okay,  
23 I misread that.

24 Q. If I were to tell you that Oakwood  
25 filed for bankruptcy on November 15, would that

1 THOMAS IRWIN

2 in any way affect your opinion of why it may  
3 have been of particular interest to you to  
4 review this document on November 14, 2002?

5 A. Yes. I was with Fiachra in -- what is  
6 it, North Carolina?

7 MR. OSNATO: Correct.

8 A. I went down there that afternoon. So  
9 we were preparing to meet with Oakwood.

10 Q. Okay. Let's talk about that some  
11 more. So you and Mr. O'Driscoll went to North  
12 Carolina on November 14, 2002?

13 A. Yes.

14 Q. Do you recall reviewing this document  
15 prior to traveling to North Carolina?

16 A. No, I don't.

17 Q. Do you recall when you reviewed this  
18 document?

19 A. What document?

20 Q. These sale and service -- the sale and  
21 servicing agreement?

22 A. No, I don't.

23 Q. Would it have been likely that you  
24 would have reviewed it prior to November 14,  
25 2002 at 10:27 p.m.?

1 THOMAS IRWIN

2 A. It's possible.

3 Q. So when on the 14th did you travel to  
4 North Carolina, Mr. Irwin?

5 A. Approximately 8:00 p.m.

6 Q. When did you return to New York?

7 A. I think the following evening.

8 Q. So what precisely did you do while you  
9 were in North Carolina?

10 A. I was asked to go down there to meet  
11 with the company, sat down, met with the  
12 company, met senior management, they informed me  
13 of what their -- what was going to transpire on  
14 the 15th.

15 Q. Which was a bankruptcy filing?

16 A. I think that was being contemplated at  
17 the time. I don't know if it was decided or  
18 not.

19 Q. Did you have reason to suspect that a  
20 bankruptcy petition would be filed on the 15th  
21 before you flew down to North Carolina?

22 A. No, I did not.

23 Q. So that was news to you, that was the  
24 first time you had heard of that possibility?

25 A. Yes.

1 THOMAS IRWIN

2 Q. How did you react to being informed of  
3 that fact?

4 A. I got on the plane and flew down there  
5 with them.

6 Q. I'm sorry, so you were informed of the  
7 possibility of a bankruptcy prior to flying down  
8 to North Carolina or while you were in North  
9 Carolina?

10 A. I don't recall exactly when I was  
11 notified.

12 Q. But it wasn't before the 14th?

13 A. No, it was not. It was after the  
14 start of the trip. I just don't recall exactly  
15 when.

16 Q. Besides meeting with Oakwood's  
17 management, do you remember doing anything else  
18 in North Carolina?

19 A. No, that was it.

20 Q. Do you recall having any discussions  
21 with Mr. Felt while you were in North Carolina?

22 A. I met Mr. Felt while I was there.

23 Q. Do you recall any discussions you had  
24 with Mr. Felt?

25 A. Not specifically.

1 THOMAS IRWIN

2 Q. Do you remember generally the nature  
3 of any discussions you had with Mr. Felt?

4 A. Just I think it was ongoing, whatever  
5 was transpiring in those meetings which I don't  
6 recall the direct content of.

7 Q. So you had never met Mr. Felt prior to  
8 your trip to North Carolina?

9 A. No, I had not.

10 Q. Had you ever corresponded with Mr.  
11 Felt or spoke with him on the phone?

12 A. No, not that I am aware of.

13 Q. Do you recall any discussions you had  
14 with Mr. O'Driscoll while you were in North  
15 Carolina?

16 A. It was more in terms of, you know,  
17 that the company was evaluating its situation  
18 and that was -- you know, that's as much as I  
19 remember specifically. And meeting with  
20 management as they started to present some of --  
21 some financial information on the company.

22 Q. Does this discussion refresh your  
23 recollection at all of when Mr. O'Driscoll first  
24 approached you about potentially modifying the  
25 facility upon an Oakwood bankruptcy petition?

1

THOMAS IRWIN

2

A. At some point during this there were discussions about a new facility.

3

4

Q. Do you recall whether or not that was the first time such discussions occurred?

5

6

A. To my recollection, yes.

7

Q. In your experience based on your ordinary practice, would review of the main document in a particular deal be one of the first steps in the analysis of whether or not to grant a new credit facility or continue an old one upon a bankruptcy petition?

8

9

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A. I'm sorry, can you restate?

14

Q. Sure. Where in the order of priority would review of the existing documents fall in the analysis that would be performed following a request to either grant a new credit facility or continue an old one upon a bankruptcy petition of a counter party or originator, would that be high on the list, low on the list in terms of priority?

15

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A. It would be an existing document. If you were looking at an existing sale and servicing agreement, it would be an important document to review at about that time, yes.

23

24

25

1 THOMAS IRWIN

2 Q. Where in the relative order of  
3 priority would that review fall, would that be  
4 one of the first things you do, one of the last  
5 things you would do, somewhere in the middle?

6 A. You would review your existing  
7 documentation prior to the bankruptcy because  
8 you would want to know what your situation was  
9 in the event of a bankruptcy.

10 Q. Right, but in terms of the order in  
11 which things would be done, in the review  
12 process, where would the analysis of existing  
13 documentation fall, would that be one of the  
14 first things done in the process, one of the  
15 last things done in the process?

16 A. Prior to bankruptcy it would be  
17 done -- if you were aware that one was pending  
18 or if there was a distress situation, you would  
19 look at your documents and understand what the  
20 legal ramifications were of an event if you were  
21 aware of it.

22 Q. Would you look at those documents  
23 prior to reviewing the present financial  
24 condition of the originator?

25 A. Those documents would be a part of the

# **Exhibit "C"**



DOUGLAS R. MUIR

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

- - - - -X  
In Re: : Chapter 11  
OAKWOOD HOMES CORPORATION, : Case No. 02-13396  
et al., : (PJW)  
Jointly Administered

Debtors.

OHC LIQUIDATION TRUST,

Plaintiff,

v.

Adv. Proc. No.

: 04-57060 (PJW)

CREDIT SUISSE FIRST BOSTON,  
a Swiss banking corporation, :  
CREDIT SUISSE FIRST BOSTON  
LLC, a Delaware limited :  
liability corporation, CREDIT  
SUISSE FIRST BOSTON, INC., :  
CREDIT SUISSE FIRST BOSTON  
(U.S.A.), INC., a Delaware :  
corporation and a wholly  
owned subsidiary of CREDIT :  
SUISSE FIRST BOSTON, INC.,  
the subsidiaries and :  
affiliates of each, and  
DOES 1 through 100, :

Defendants.

- - - - -X  
Videotape Deposition of DOUGLAS R. MUIR, VOLUME I  
(Taken by Defendants)  
Winston-Salem, North Carolina  
September 26, 2006

Prepared by: K. Denise Neal  
Registered Professional Reporter  
Notary Public

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1 its predecessor, First Union.

2 Q. Why did Oakwood's management decide on  
3 Foothill as the provider of the second bank credit  
4 facility?

5 A. I don't know.

6 Q. Who made the decision to use Foothill?

7 A. I don't know.

8 Q. No one consulted you about that?

9 A. I was only very tangentially involved in  
10 the Foothill transaction.

11 Q. But how could that be if you were the  
12 person who was really in charge of financing for the  
13 company?

14 MR. CASTANARES: I object to the form of  
15 the question.

16 THE WITNESS: At that particular time for  
17 whatever reason I was not running the train on  
18 Foothill. I did not negotiate with Foothill. I  
19 did review drafts of Foothill documents. So, I  
20 mean, I knew what the transaction was about, but  
21 I didn't negotiate it. Bob Smith handled that  
22 negotiation with Foothill.

23 Q. (By Ms. Warren) To the best of your  
24 recollection did Credit Suisse have anything to do  
25 with either the First Union syndicated facility or

1 the Foothill facility?

2 A. They weren't in the lender group for  
3 either of them. I can think of no relationship at  
4 all between Credit Suisse and either of those  
5 facilities.

6 Q. Let's talk about the servicing advance  
7 facility that you referred to earlier. Was that  
8 something that Oakwood set up using a financial  
9 institution?

10 A. Well, the idea for the servicing advance  
11 facility came from First Boston and they helped us  
12 set it up, helped us structure it, work with the  
13 rating agencies on it.

14 Q. And forgive me because I know you  
15 described this briefly before, but what was the  
16 purpose of that facility?

17 A. It was as follows: In the mortgage  
18 servicing business the servicing contract typically  
19 requires the servicer of a mortgage loan to make a  
20 mortgage payment on behalf of delinquent obligors.

21 So if an obligor's loan payment is due on  
22 the 1st and is past due on the 15th and on the 20th  
23 of the month when the -- when the proceeds of the  
24 loans in a particular securitization vehicle are  
25 scheduled to be passed through to investors, if that

1 person hasn't made their mortgage payment, the pot of  
2 money is going to be light if you will because that  
3 payment isn't there. The servicing agreement  
4 requires the servicer to advance that delinquent  
5 payment on behalf of the obligor.

6 That requires the servicer to have the  
7 money to do so, to make the advance on behalf of the  
8 delinquent obligor. The servicer again has to make  
9 that advance in virtually all circumstances. There  
10 are certain exceptions, but having made the advance,  
11 the servicer's right to be repaid the advance from  
12 the assets of the trust is a very senior obligation  
13 of the trust even ahead of the bondholders.

14 So the whole idea with the servicing  
15 advance facility was to provide Oakwood additional  
16 liquidity to enable it to make advances on behalf of  
17 delinquent obligors and finance the cash required to  
18 make those advances from an investor using a true  
19 sale bankruptcy remote special purpose entity type  
20 structure.

21 Q. When did Credit Suisse propose the  
22 servicing advance facility?

23 A. As best I can recall it was probably  
24 sometime in the summer of 2001, roughly that vintage.  
25 I think Fiachra O'Driscoll and I first discussed the

1 concept of in essence securitizing these advance  
2 receivables in a way not terribly dissimilar to how  
3 once securitizes loans and we said, gee, that would  
4 be neat and it would be a neat transaction that could  
5 be done. We knew an investor who we thought would be  
6 interested and so we proceeded to think about it. It  
7 was relatively new technology at the time that it was  
8 done.

9 Q. And when you say we knew an investor who  
10 might be interested, who's the we?

11 A. It was at least -- at least me and I think  
12 CSFB as well.

13 Q. And who was that investor?

14 A. Prudential Insurance.

15 Q. And how did you come to know or believe  
16 that Prudential would be interested in this  
17 transaction?

18 A. Oakwood had done a series of  
19 securitization transactions with Prudential going  
20 back to 1989. There had been ten of them at least.  
21 We knew them very well. The people at Prudential  
22 knew us very well, knew our operation very well, and  
23 we felt we could create an instrument that would be  
24 attractive to them.

25 Q. And they went for it?

1 A. We ultimately closed a transaction that  
2 was -- that worked for everyone.

3 Q. And did you or someone else in Oakwood  
4 management direct Credit Suisse to approach  
5 Prudential about this facility?

6 A. I probably did. I don't have an explicit  
7 recollection but, I mean, I would imagine I had a  
8 conversation with Fiachra and we said gee, this is a  
9 good fit for Pru. Why don't you call up Mike, call  
10 up Mike Bozzo and draw him a picture of it and see if  
11 he wants to talk about it. Probably how it happened.

12 Q. You also spoke about the ABS market, which  
13 was the securitization of the loans; right?

14 A. Uh-huh, correct.

15 Q. Would you just describe generally how that  
16 worked?

17 A. Yes. You'd like me to describe the  
18 securitization process generally?

19 Q. Yes.

20 A. Okay. The process is basically this:  
21 Step one is assemble a pool of loans, a pool simply  
22 being a number of loans, could be a hundred, more  
23 likely 5,000, that you had originated over a period  
24 of time. You tested the loans to make sure that they  
25 met certain criteria that you felt were important,

1 that you thought that the rating agencies would think  
2 was important, thought that potential buyers of the  
3 securities would think was important. You ultimately  
4 arrived at a pool of loans.

5 You basically take those -- that pool of  
6 loans and deposit them into a securitization vehicle.  
7 Typically we use trusts. Doesn't have to be trusts.  
8 You convey title of the loans to a trust. You  
9 appoint a trustee. Trustee now is the record owner  
10 of all of those assets and the trustee is entitled to  
11 receive all the proceeds of those assets. Then the  
12 trust then issues a series of securities.

13 Typically they look like debt. They have  
14 principal balances. They have rates of interest that  
15 accrue on them, sometimes fixed, sometimes variable.  
16 Sometimes the securities have no principal. They may  
17 be interest only securities. You basically create a  
18 set of securities that ultimately capture all of the  
19 cash that is thrown off by the assets and then you go  
20 into the market and sell some or all of the  
21 securities that you've created.

22 Sometimes you do it pure private deal.  
23 Sometimes you do it exempt transaction. Sometimes  
24 you do it in the public market off a registration  
25 statement. And at the end of the day after you've

1 sold the securities, you receive the proceeds and  
2 that's how you ultimately complete the cycle of way  
3 back when, building a home, selling a home, creating  
4 a loan. That's how you ultimately realize the value  
5 of those loans that you create <sup>a finance</sup> ~~an advance~~ company.

6 Q. During the period 1999 to 2000 who set  
7 Oakwood's credit standards for the loans that it  
8 originated?

9 A. I don't know that a single individual did.  
10 It certainly would be discussed by people in Oakwood  
11 Acceptance. Again, I didn't have anything to do  
12 really with the origination or an origination side of  
13 Oakwood Acceptance. I was strictly on the servicing  
14 and securitization side.

15 So credit would be involved, the CEO of  
16 the company would be involved, Bob Smith would be  
17 involved because he was operationally in charge of  
18 Oakwood Acceptance. Occasionally I might be  
19 consulted particularly if something were contemplated  
20 that might influence the securitization process.

21 Q. To your knowledge did Credit Suisse have  
22 any role in determining or setting Oakwood's credit  
23 standards?

24 A. They had a role that I would describe as  
25 this. At all times we desired to originate loans



1 that could be packaged and securitized because if  
2 we're unable to securitize them, we had no  
3 alternative means to obtain the permanent financing  
4 to originate those loans. So we were very interested  
5 in coming up and originating loans that could be  
6 securitized.

7 So in the event that someone was thinking  
8 about making a decision that affected which customers  
9 got approved and which didn't or the terms under  
10 which loans were originated in terms of downpayment,  
11 interest rate, credit score, real property versus  
12 personal property, we would often consult with CSFB  
13 on that to get their view on how that would affect  
14 the market's perception of the collateral.

15 Q. Did management consult anyone else outside  
16 of the company about credit standards?

17 A. Besides CSFB? Not that I recall. I'd  
18 have to think about it, but off the top of my head I  
19 can't recall anyone.

20 Q. Who had the final decision over the credit  
21 standards for loan origination? Was that Bob Smith?

22 A. I'm not sure I always know the answer and  
23 here's why. Again, I wasn't directly in the loop.  
24 We did not have, for example, a credit committee as  
25 some financial institutions do to make those

1 Q. (By Ms. Warren) Were you generally  
2 successful in -- in setting a fee that you thought  
3 was appropriate for -- to compensate Credit Suisse  
4 for its underwriting services?

5 A. Yes.

6 Q. How was Credit Suisse compensated for  
7 providing the OMI Note Trust facility?

8 A. There were several elements. I'm doing  
9 this from memory, but I think I have this right.  
10 There was a rate of interest applied to amounts that  
11 OMI Trust borrowed from CSFB. So we paid them  
12 interest on the outstandings as a form of  
13 compensation.

14 There was a fee letter or more than one  
15 fee letter that specified a monthly fee that was to  
16 be paid to CSFB, and it was a fixed fee. And then in  
17 addition when the transaction was first put together  
18 in February of 2001, part of the consideration was  
19 CSFB received a warrant to acquire Oakwood shares.

20 Q. I didn't hear the last part. A warrant to  
21 acquire --

22 A. Shares, common shares of Oakwood.

23 Q. Common shares. Did you negotiate the  
24 compensation arrangement with Credit Suisse for the  
25 OMI Note Trust?

1 A. I discussed it with Fiachra. We discussed  
2 it a lot internally. We discussed it with the board.

3 Q. Were you the point person for dealing with  
4 Credit Suisse on this issue?

5 A. I was involved. I think -- I think Bob  
6 Smith was also involved.

7 Q. What were Oakwood management's criteria  
8 for determining how much they thought it would be  
9 appropriate to pay Credit Suisse for the OMI Note  
10 Trust facility?

11 A. Well, I can't speak for others. It was an  
12 interesting negotiation in that it was not a  
13 transaction in which there were a half a dozen credit  
14 providers lined up at the door, each of which was  
15 offering to do this transaction. At the time CSFB  
16 was the only game in town.

17 It's difficult to negotiate with someone  
18 when you are trying to get them to bid against  
19 themselves. So we did the best we could and  
20 ultimately agreed on a package that we agreed was in  
21 our best interests to do and that our board agreed  
22 that it was in our best interests to do it.

23 Q. How did Oakwood's management determine  
24 that the package was acceptable?

25 A. Again, I can't speak for anyone else, but

1 at the time --

2 Q. Well, I'm asking for your understanding  
3 based on your conversations with others. I'm not  
4 asking to go into their heads, but that's the basis  
5 of my question.

6 A. I don't have a recollection of  
7 conversations with others. At the time the Bank of  
8 America facility was due to expire. There was  
9 immense pressure from Bank of America to take them  
10 out, to retire that facility. There were tremendous  
11 fees being charged by Bank of America for failing to  
12 take them out.

13 CSFB was the only game in town. It was a  
14 critical facility, had to get done. And on -- in  
15 that -- in the light of those circumstances I  
16 concluded that it was a deal that should get done.

17 Q. Were the fees for the Credit Suisse loan  
18 purchase facility approximately what B of A had been  
19 charging?

20 A. No.

21 Q. Were they higher?

22 A. Yes.

23 Q. Did you apply any pressure on Credit  
24 Suisse to take over the loan purchase facility from  
25 Bank of America when Bank of America informed you

1 that it wanted out?

2 A. I wouldn't characterize it as pressure,  
3 but we certainly -- having a successor facility to  
4 the Bank of America warehousing facility was of  
5 critical importance. While I don't remember any  
6 specific conversations with CSFB, I know there were a  
7 number of them in which, you know, I was hopeful that  
8 CSFB working through Fiachra would be able to serve  
9 up a proposal to provide that liquidity that would  
10 work for them and would work for us.

11 Q. Well, how was the subject raised with  
12 Credit Suisse? Did you raise it?

13 A. Again, I don't have any recollection of  
14 any specific conversations with CSFB during the time  
15 we were contemplating that agreement. My  
16 recollection at the time was I was clearly aware that  
17 we were under pressure from B of A and I would have  
18 discussed that with Fiachra.

19 Q. Did you ever tell Mr. O'Driscoll in words  
20 or substance that Credit Suisse had better help out  
21 on this bank facility or Oakwood would terminate all  
22 or part of the securitization relationship?

23 A. I don't remember ever telling him that. I  
24 do remember but I can't tell you when there were --  
25 there was a conversation with Fiachra somewhere along

1 Q. How was that decision taken? Who made the  
2 decision?

3 A. I don't know that any one individual did,  
4 but certainly Mike and I discussed it. Bob and I  
5 would have discussed it, Myles and I. We talked to  
6 the people in our retail organization.

7 The reason they were important is they  
8 were part of the process of helping sell repossessed  
9 properties and they had a significant role in the  
10 loan assumption program. So we all discussed it and  
11 discussed the merits and thought that -- that it was  
12 possible to run a program that made sense.

13 Q. Do you remember approximately when  
14 Oakwood, in fact, implemented the expansion of the  
15 loan assumption program?

16 A. I don't remember exactly, but my best  
17 recollection is it's sometime in the summer or  
18 perhaps the fall of 2000. I could be off.

19 Q. Who was in charge, if anyone, of  
20 monitoring the expansion -- the expanded assumptions  
21 program to see if it was doing what it was supposed  
22 to do?

23 A. I don't know.

24 Q. Was there anyone monitoring the loan  
25 assumptions program at Oakwood?

1           A.     I don't know of anyone who was tasked  
2 specifically with monitoring it. There was  
3 information available including some available to me  
4 that enabled me to get an understanding of how many  
5 loans were being put through the program. What  
6 information others had, I don't know.

7           Q.     Am I correct that at some point it came to  
8 your attention that the assumptions program was not  
9 having the desired effect?

10          A.     I would -- I would characterize it as  
11 having come to my attention that it had some side  
12 effects.

13          Q.     Explain that to me.

14          A.     The information came to my attention that  
15 caused me to believe that we were doing too many loan  
16 assumptions, that the loan assumption process was  
17 being applied to delinquent loans that were not good  
18 candidates for it, and that as a consequence that  
19 running the program was having some significant  
20 adverse liquidity effects. It was eating up cash.

21          Q.     When did that come to your attention?

22          A.     As best I can recall would be sometime in  
23 the spring, late winter, early spring, early summer  
24 of 2001, certainly by July of that year.

25          Q.     And do you remember when you informed

1 Credit Suisse that the expanded loan assumption  
2 program was having difficulties or side effects?

3 A. I don't.

4 Q. To your knowledge was Credit Suisse  
5 involved in the decision to expand the loan  
6 assumptions program?

7 A. I don't think they -- to my knowledge they  
8 were not involved in the decision. They were  
9 certainly informed of it.

10 Q. Was the loan assumption program eventually  
11 terminated?

12 A. Yes.

13 Q. And around when was that?

14 A. Around July of 2001 I believe is the  
15 correct date.

16 Q. Who made the decision to terminate the  
17 loan assumption program?

18 A. As best I recall, Bob and Myles and I  
19 collectively discussed it. Myles was very much in  
20 favor of terminating it and so was I. So I guess  
21 ultimately Myles, who was CEO of the company, made  
22 the decision.

23 Q. Do you remember when or if Credit Suisse  
24 was informed of the decision to terminate the loan  
25 assumption program?



1 A. No. I'm sorry. Did you say -- was the  
2 question when or if?

3 Q. Yes.

4 A. I know we told them. When we told them, I  
5 don't know.

6 Q. Do you remember any reaction from the  
7 Credit Suisse people about being informed that the  
8 loan assumption program had terminated?

9 A. I don't because, again, I don't have a  
10 specific recollection of calling and telling anyone.

11 Q. We've touched on this a bit in passing,  
12 but what services did Credit Suisse provide for  
13 Oakwood during the period 1999 to the petition date?

14 A. Two or three depending on how you count.  
15 The ones that I remember are they were the ongoing  
16 lead underwriter for the ABS transactions, which was  
17 a -- generally a quarterly type event. They were the  
18 arranger of the servicing advance facility in the  
19 fall of 2001 as I recall, around October.

20 There were a number of occasions when  
21 people from CSFB outside the investment banking side,  
22 for example, perhaps from the investment banking side  
23 or the financial advisory side came and talked to us  
24 about ideas. These were not engagements where there  
25 was an engagement letter and they were getting a fee.

1 it's been a while; but I think the note account is a  
2 bank account maintained at Chase by the trustee of  
3 the trust into which was deposited the proceeds of  
4 the assets of the trust, collections on the loans,  
5 for example.

6 Q. And section 3.2 below it entitled flow of  
7 funds sets out priorities to which those funds were  
8 to be devoted. Is that generally correct?

9 A. Yeah. I think so.

10 Q. And looking at those priorities from the  
11 first one on page 37 of the document to the last one,  
12 the 11th on page 38 of the document, do these  
13 generally accord with your recollection of the  
14 priorities for the flow of funds in the note account?

15 A. Yes.

16 Q. And do you ever recollect the flow of  
17 funds from the note account being different from  
18 what's set forth in section 3.2?

19 A. I have no reason to think that they were  
20 ever different.

21 Q. Where in this section 3.2 is there a  
22 description of any residual interest that Oakwood may  
23 have had in these funds in the note account?

24 MR. CASTANARES: Object to the form of the  
25 question.

1 THE WITNESS: Could you repeat the  
2 question, please?

3 MS. WARREN: Sure. Why don't you read it  
4 back.

5 (The record was read by the reporter.)

6 THE WITNESS: I'm trying to find a  
7 definition. I'm not sure without reviewing the  
8 documents taken as a whole, but I suspect  
9 Romanette ten will accomplish that goal.

10 Q. (By Ms. Warren) And that's the section  
11 that refers to the certificate distribution account?

12 A. Yes. I was trying to find the definition  
13 of certificates to refresh my recollection of what  
14 that means.

15 Q. When you testified earlier that it's your  
16 belief that Oakwood had a beneficial interest in  
17 funds in the note account, was this what you were  
18 referring to?

19 MR. CASTANARES: Object to the form of the  
20 question.

21 THE WITNESS: This provision may be part  
22 of it, but if you look at the agreements taken  
23 as a whole and we were to dissect them, I think  
24 what we would find is that the trustee was the  
25 owner of the assets in the trust, collected all

1 of the proceeds of those assets and disbursed  
2 all of those assets in accordance with this  
3 agreement, perhaps with other agreements; but at  
4 the end of the day to the extent once everybody  
5 ahead of Oakwood in the payment priority was  
6 paid, any cash that was left over ultimately  
7 made its way back to Oakwood.

8 Q. (By Ms. Warren) And is it your  
9 recollection that that, in fact, would happen over  
10 the course of the existence of this OMI Note Trust?

11 A. It did happen.

12 Q. And do you remember approximately how much  
13 in funds would come back to Oakwood eventually?

14 A. A lot of money, but I couldn't give you a  
15 dollar amount. It is derivable if we were to take  
16 the records and look, but it's a substantial amount  
17 of money.

18 Q. Take a look at section 3.8, please, which  
19 is entitled sale of receivables. And that's at page  
20 CSFB-92194 of Exhibit 212 -- I'm sorry -- 213. Does  
21 this provision concern the sale of mortgages into the  
22 REMIC trust?

23 MR. CASTANARES: Objection to form.

24 THE WITNESS: It certainly could.

25 Q. (By Ms. Warren) What's your --

1 A. And often did.

2 Q. Is it your understanding that this  
3 provision allows the OMI Note Trust to use proceeds  
4 to pay note holders?

5 A. Proceeds of sale of assets?

6 Q. Yes.

7 A. Yes.

8 Q. Do you know of any claim that Oakwood  
9 could assert over funds that were to be paid to note  
10 holders pursuant to this agreement, Exhibit 213?

11 A. I'm not sure I understand the question.  
12 I'm sorry.

13 Q. Do you know of any reason why Oakwood  
14 would have any right to proceeds that were paid to  
15 note holders out of the OMI Note Trust account  
16 pursuant to this agreement, Exhibit 213?

17 A. Let me say it another way to make sure I  
18 understand the question. If you're asking me if the  
19 class A note holders received money pursuant to this  
20 agreement and there wasn't some error made, does  
21 Oakwood have any claim to that money. I think the  
22 answer -- so far as I know the answer is no, but I'm  
23 not a lawyer.

24 Q. Understood. I'm just asking for your  
25 understanding as the business person who dealt with

## DEPOSITION OF DOUGLAS R. MUIR, VOLUME I/KDN

I do hereby certify that I have read all questions propounded to me and all answers given by me on the 26th day of September, 2006, taken before K. Denise Neal, and that:

1) There are no changes noted.

2) The following changes are noted:

Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure, which reads in part: Any changes in form or substance which you desire to make shall be entered upon the deposition...with a statement of the reasons given...for making them. Accordingly, to assist you in effecting corrections, please use the form below:

Page No. 44	Line No. 5	should read: "an advance Company" should <del>not</del> read "in
Page No.	Line No.	should read: a finance Company"
Page No.	Line No.	should read:
Page No. 145	Line No. 22	should read: "liquidated" should be "unliquidated"
Page No.	Line No.	should read:
Page No. 150	Line No. 44	should read: "J.L. Durham" should be "J. Durham"
Page No.	Line No.	should read:
Page No. 159	Line No. 3	should read: "nonbonting" should be "nonbonting"
Page No.	Line No.	should read:
Page No.	Line No.	should read:

## DEPOSITION OF DOUGLAS R. MUIR, VOLUME I/KDN

Page No. Line No. should read:

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Page No. Line No. should read:

Page No. Line No. should read:

If supplemental or additional pages are necessary,  
please furnish same in typewriting annexed to this  
deposition.



DOUGLAS R. MUIR

EXHIBIT D REDACTED  
IN ITS ENTIRETY



# **Exhibit "E"**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

**COPY**

-----x  
In Re: ) Chapter 11  
OAKWOOD HOMES CORPORATION, ) Case No. 02-13396  
et al., ) (PJW)  
Debtors. ) Jointly Administered

-----x  
OHC LIQUIDATION TRUST, )  
Plaintiff, )

vs. ) Adv. Proc. No.

CREDIT SUISSE FIRST BOSTON, a) 04-57060 (PJW)

Swiss banking corporation, )

CREDIT SUISSE FIRST BOSTON )

LLC, a Delaware limited )

liability corporation, CREDIT)

SUISSE FIRST BOSTON, INC., )

CREDIT SUISSE FIRST BOSTON )

(U.S.A.), INC., a Delaware )

corporation and a wholly )

owned subsidiary of CREDIT )

SUISSE FIRST BOSTON, INC., the )

subsidiaries and affiliates )

of each, and DOES 1 through )

100, )

Defendants.)

-----x  
September 5, 2007

10:15 a.m.

Deposition of ALAN C. SHAPIRO, held at  
the law offices of Linklaters LLP, 1345 Avenue of  
the Americas, New York, New York, pursuant to  
agreement, before Donald R. DePew, an RPR, CRR and  
Notary Public within and for the State of  
New York.

ALAN SHAPIRO

MR. CASTANARES: Tony Castanares,

Stutman Treister & Glatt, for the plaintiff.

THE VIDEOGRAPHER: Will the court  
reporter please swear in the witness.

A L A N C . S H A P I R O, called as a  
witness, having been duly sworn by the  
Notary Public, was examined and testified as  
follows:

EXAMINATION BY

MR. WICKES:

Q. Professor Shapiro, I see from your  
expert report and your qualifications that you are  
experienced at this business of depositions, so I  
assume I don't need to explain the process to you;  
is that right?

A. Yes.

Q. All right. Is there any reason today  
why you're not able to give us your best  
testimony?

A. No.

Q. All right. Professor, in your expert  
report, dated April 30th, 2007, which we've marked  
as Exhibit 501 in this case, you tell us on page 4  
that you've been "asked by counsel to assume that

1

10:18:07 2 CSFB owed Oakwood and its creditors a fiduciary  
10:18:14 3 responsibility"; is that correct?

10:18:14 4 A. Yes.

10:18:15 5 Q. Tell me, if you would, Professor, how  
10:18:16 6 would the conclusions in your report have been  
10:18:18 7 different had you not made that assumption.

10:18:23 8 A. Well, I can't --

10:18:25 9 MR. CASTANARES: Objection to form.

10:18:27 10 A. I can't give you -- well, a legal  
10:18:33 11 opinion, but I guess I would say even if there  
10:18:46 12 were no fiduciary obligation that Credit Suisse's  
10:18:53 13 behavior was inconsistent with its -- with the  
10:18:59 14 guidelines in its compliance manual. So from that  
10:19:04 15 standpoint I think my conclusions would still  
10:19:12 16 stand, in that as my specific opinions, which are  
10:19:17 17 expressed on pages 3 and 4, that CSFB did not  
10:19:21 18 behave in a reasonable or a reasonably prudent  
10:19:26 19 manner with respect to the services it provided to  
10:19:30 20 Oakwood doesn't rely specifically on the existence  
10:19:34 21 of a fiduciary obligation.

10:19:38 22 And second, that my opinion that CSFB  
10:19:41 23 had financial incentives to keep Oakwood operating  
10:19:44 24 and to delay recommending that Oakwood file for  
10:19:49 25 bankruptcy doesn't -- does not specifically rely

ALAN SHAPIRO

on the assumption of a fiduciary obligation, but I think that it does -- it's inconsistent with the guidelines in the compliance manual.

Q. So do I understand from that answer that your conclusions would not be any different if you had not made the assumption identified at Roman numeral V.A on page 4 of your report?

A. Yes, I believe that the fiduciary obligation certainly strengthens my conclusions, but I think those conclusions would still stand.

Q. In what way does the fiduciary obligation strengthen your conclusions?

A. Well, it would strengthen the -- it wouldn't affect the second conclusion regarding financial incentives, those exist independent of any fiduciary obligation. But the reasonable or reasonably prudent, I think you do want to take in figuring whether something -- whether somebody behaved in a reasonable manner. I think if they had a fiduciary obligation to behave in a certain way that that strengthens that obligation or makes behavior less reasonable than it otherwise would.

Q. Who was it who asked you to make that assumption?

ALAN SHAPIRO

10:21:40 2 A. I don't recall the specific person, but  
10:21:45 3 it was somebody from the law firm of Stutman.

10:21:53 4 Q. Do you remember when it was you were  
10:21:55 5 asked to make that assumption?

10:21:57 6 A. It was sometime before I began writing  
10:22:01 7 my report.

10:22:03 8 Q. Was it before you began work on your  
10:22:07 9 report?

10:22:10 10 A. I believe so.

10:22:12 11 Q. And you can't remember who it was who  
10:22:14 12 asked you to make the assumption?

10:22:15 13 A. No, I don't. I can't.

10:22:18 14 Q. Can you remember the occasion when you  
10:22:19 15 were asked to make that assumption?

10:22:22 16 A. Not specifically. We had various  
10:22:25 17 meetings, both telephonic conversations as well as  
10:22:29 18 in-person meetings.

10:22:32 19 Q. Before you began to write?

10:22:35 20 A. That's correct, and then while I was  
10:22:36 21 working on the report.

10:22:44 22 Q. Do you remember whether it was in a  
10:22:48 23 group meeting that someone asked you to make this  
10:22:51 24 assumption or one on one?

10:22:54 25 A. I believe that all my meetings were

ALAN SHAPIRO

10:47:42 2

Q. And Dr. Sarin's?

10:47:45 3

A. Dr. Sarin's is \$600.

10:47:47 4

Q. Okay. And Mr. Sandhu?

10:47:53 5

A. His rate, I believe, is \$400 an hour.

10:47:57 6

Q. Okay. How much in total have you

10:48:01 7

billed or been paid so far on this matter?

10:48:06 8

A. \$984,000.

10:48:12 9

Q. And that's the total billings for your

10:48:14 10

work and the work of the others you've described?

10:48:17 11

A. That's correct.

10:48:17 12

Q. Do you know approximately what portion

10:48:19 13

of that represents -- or specifically, if you

10:48:22 14

know -- represents your own time?

10:48:27 15

A. My best approximation, sitting here --

10:48:29 16

and I have not gone back to look at it -- but I

10:48:32 17

would estimate that about one-third of those

10:48:36 18

billings would be for my time and the other

10:48:38 19

two-thirds for my associates.

10:48:59 20

Q. Do you know approximately how many

10:49:00 21

hours you've spent on this matter?

10:49:04 22

A. No. I could estimate, as I said, based

10:49:08 23

on my rate and my estimated billings.

10:49:13 24

Q. I just tried to do that here quickly.

10:49:17 25

Is 400 hours, does that seem about

ALAN SHAPIRO

right?

A. That sounds about right.

Q. Okay. I won't hold you to that math  
or --

A. It's just an arithmetic issue.

Q. And have you been billed -- have you  
billed and been paid currently up through today?

A. No. I sent in my last invoice as  
the -- for August and haven't been paid on that  
yet.

Q. But is that amount included in the  
\$984,000?

A. Yes.

Q. So that's the total amount billed, some  
portion is yet unpaid?

A. That's correct.

Q. But you have confidence in the Stutman  
firm that it will be paid?

A. Well, I hope so. I guess more in the  
Oakwood Liquidation Trust or...

MR. CASTANARES: We're solvent.

THE WITNESS: Good.

Q. Let me go back to your report. And I  
want to focus again on page 4 on Roman numeral



ALAN SHAPIRO

V.A. "I have been asked by counsel to assume that CSFB owed Oakwood and its creditors a fiduciary responsibility."

When you were asked to make that assumption did -- were you told what it meant to have a fiduciary responsibility?

A. Well, I was told -- I'm not -- I'm not a lawyer. I tried to translate that into -- put some economic substance to that. I mean, generally as a financial economist you hear the term fiduciary obligation on a regular basis.

Q. Well, this term is fiduciary responsibility.

A. Or responsibility, yeah.

Q. What do you understand that to mean?

A. Well, the same as a fiduciary obligation. I treat those terms to be synonymous.

Q. Okay. And what do those synonymous terms mean?

A. Well, I understand from a legal standpoint that there are, generally speaking, two aspects to it, a duty of care and a duty of loyalty.

The care I translate into looking after

ALAN SHAPIRO

10:51:47 2 the economic interests of the other party or  
10:51:51 3 parties. And the duty of loyalty, basically no  
10:52:01 4 self-dealing or no enriching yourself at the  
10:52:04 5 expense of the other party.

10:52:11 6 Q. When you were asked to make the  
10:52:12 7 assumption about fiduciary responsibility that is  
10:52:16 8 described here in your report, did whoever it was  
10:52:19 9 who asked you that give you either a definition or  
10:52:23 10 explain to you what was meant by that term?

10:52:30 11 A. No.

10:52:31 12 Well, as best I recall, we did talk  
10:52:34 13 about that.

10:52:35 14 Q. Okay.

10:52:38 15 A. And, you know, I tried to -- as I said,  
10:52:41 16 I tried to translate that into something that I'm  
10:52:45 17 familiar with. In other words, into something of  
10:52:48 18 economic consequence. And, you know, although I  
10:52:54 19 don't have a real specific recollection, I believe  
10:52:58 20 that whoever I talked to agreed that that -- the  
10:53:06 21 economic terminology that I used was consistent  
10:53:10 22 with the notion of a fiduciary obligation.

10:53:21 23 Q. And you said that the assumption that  
10:53:23 24 you made was that CSFB owed that fiduciary  
10:53:29 25 obligation to Oakwood and its creditors. So let's

ALAN SHAPIRO

10:53:33 2 break that apart a bit.

10:53:35 3 A. Sure.

10:53:35 4 Q. When you talk about owing a fiduciary  
10:53:37 5 responsibility to Oakwood, what do we mean by  
10:53:40 6 Oakwood in that context?

10:53:43 7 A. Oakwood the enterprise.

10:53:48 8 Q. So can we sort of use the term Oakwood  
10:53:51 9 and the company interchangeably there?

10:53:54 10 A. Yes.

10:53:55 11 Q. All right.

10:53:56 12 A. And I translate that, when I think  
10:53:59 13 about the duty to a company I translate that into  
10:54:03 14 the economic interests of its owners.

10:54:21 15 Q. So does that --

10:54:22 16 Do I understand from that, that when  
10:54:23 17 you say that you assumed that CSFB owed Oakwood  
10:54:29 18 separate from its creditors, that it owed Oakwood  
10:54:33 19 a fiduciary responsibility, that in that sense  
10:54:35 20 you're really referring to a duty owing to the  
10:54:37 21 shareholders?

10:54:38 22 A. No. When I -- I think I wasn't precise  
10:54:43 23 enough. When I talk about owners I mean the  
10:54:46 24 owners of all its securities. Generally that  
10:54:49 25 means a responsibility to the shareholders.

ALAN SHAPIRO

10:54:54 2 Q. Right.

10:54:55 3 A. But in this particular case, given that  
10:55:03 4 I assume that the company was insolvent in effect,  
10:55:10 5 I believe that the company was owned by its  
10:55:15 6 creditors.

10:55:39 7 Q. So when you say -- well, let me ask a  
10:55:44 8 different --

10:55:45 9 If I read that sentence to say simply I  
10:55:47 10 was asked to assume that CSFB owed Oakwood's  
10:55:52 11 creditors a fiduciary responsibility, is that  
10:55:55 12 saying anything different than what the sentence  
10:55:57 13 says as its written?

10:55:59 14 MR. CASTANARES: Objection to form.

10:56:04 15 A. Not really in this particular case.

10:56:11 16 Q. CSFB -- you have a chart I was just  
10:56:14 17 trying to find in your report that indicates that  
10:56:17 18 CSFB was underwriting asset-backed securities for  
10:56:23 19 this company for a number of years.

10:56:25 20 Do you remember that?

10:56:26 21 A. Yes.

10:56:30 22 Q. And is your opinion that --

10:56:34 23 A. Page 17.

10:56:36 24 Q. Page 17. Good.

10:56:46 25 Page 17 doesn't tell us when they

ALAN SHAPIRO

10:56:48 2 started underwriting asset-backed securities, does  
10:56:52 3 it?

10:56:53 4 A. Oh, I think that was 1994 or so.

10:56:55 5 Q. So were you asked to assume that CSFB  
10:56:58 6 owed Oakwood and its creditors a fiduciary duty  
10:57:01 7 throughout the time that Credit Suisse worked with  
10:57:07 8 Oakwood?

10:57:09 9 A. We didn't talk about that. It was just  
10:57:12 10 in the relevant time period, from about 2000 on.

10:57:36 11 Q. And that --

10:57:37 12 When you conflate the interest of the  
10:57:47 13 company and the creditors is there some event or  
10:57:50 14 some condition that causes that to happen?

10:57:54 15 MR. CASTANARES: Objection to form.

10:57:57 16 A. Yes, and that is when a company is  
10:58:01 17 economically insolvent.

10:58:15 18 Q. When a company is not economically  
10:58:19 19 insolvent, if someone owes a fiduciary duty to  
10:58:25 20 that company to whom do they owe it?

10:58:30 21 A. Well, I think that --

10:58:32 22 MR. CASTANARES: Objection, the  
10:58:33 23 question is calling for a legal conclusion.

10:58:35 24 You may answer it.

10:58:36 25 MR. WICKES: I'm asking him --

1 ALAN SHAPIRO

10:58:37 2 A. That does call for a legal conclusion.  
10:58:40 3 But speaking as an economist, I think that it's  
10:58:43 4 generally accepted among financial economists that  
10:58:46 5 for a solvent company the fiduciary obligation is  
10:58:50 6 to the shareholders of the company, the residual  
10:58:54 7 claimants.

10:58:55 8 Q. Okay. And in your understanding as a  
10:58:58 9 financial economist, when we talk about that  
10:59:01 10 fiduciary duty to an entity absent insolvency does  
10:59:12 11 the duty run to stakeholders other than the equity  
10:59:22 12 owners?

10:59:23 13 A. Well, again, that would call for a  
10:59:25 14 legal conclusion. I can tell you what is  
10:59:26 15 generally accepted among financial economists.

10:59:30 16 Q. Well, instead of that why don't you  
10:59:32 17 tell me what your understanding is.

10:59:34 18 MR. CASTANARES: Object to the question  
10:59:34 19 as calling for a legal conclusion.

10:59:36 20 A. Well, I don't have -- if you're just  
10:59:38 21 looking for a legal conclusion I can't --

10:59:41 22 Q. I'm not looking for a legal conclusion.  
10:59:43 23 I'm asking your -- you --

10:59:43 24 At the very outset of your report you  
10:59:45 25 tell us that you made an assumption, is that an

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important assumption?

A. Well, as I explained before, I think it strengthens the notion of -- or the issue of whether CSFB behaved in a reasonable manner. I don't think that it's absolutely necessary to reach the conclusion that I did.

Whether there's any legal consequence to the conclusion depends on the existence of a fiduciary obligation, I believe.

Q. Okay. According to your understanding, in a pre-insolvency situation does the fiduciary duty that someone owes to a corporation encompass only the interests of its equity holders?

A. As I've explained, that calls for a legal conclusion. But as a financial economist I can tell you I accept what the general view is among financial economists, which is that the fiduciary obligation to an entity ultimately becomes a fiduciary obligation to the shareholders and not to other stakeholders of the organization, except insofar as there's a specific obligation to those other stakeholders.

Q. Okay. So in general in a pre-insolvency situation your understanding from

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11:01:31 2 an economic point of view is that the obligation  
11:01:35 3 of someone who has a fiduciary duty to a  
11:01:38 4 corporation, is that that duty encompasses the  
11:01:41 5 interests of the equity holders and not other  
11:01:44 6 stakeholders, such as creditors, or employees, or  
11:01:47 7 the communities where the company works or others?

11:01:51 8 MR. CASTANARES: Objection to form.

11:01:53 9 A. That's correct.

11:01:55 10 Q. But that --

11:01:56 11 Do I further understand you to be  
11:01:58 12 saying that when the entity is insolvent that that  
11:02:09 13 fiduciary obligation of the outsider now switches  
11:02:14 14 and runs to the interest of the creditors?

11:02:19 15 MR. CASTANARES: Objection to form.

11:02:20 16 A. That is --

11:02:21 17 MR. CASTANARES: You may answer.

11:02:22 18 A. That is correct.

11:02:24 19 Q. Okay. Any particular creditors or all  
11:02:27 20 creditors?

11:02:29 21 A. The creditors of an entity, and then --

11:02:31 22 Q. Okay. But an entity such as Oakwood  
11:02:36 23 had lots of different kinds of creditors, right?

11:02:47 24 A. Well, you'd have to -- well, they did  
11:02:54 25 have various creditors. Some actually were



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11:02:58 2 creditors of Oakwood. Others were creditors of  
11:03:03 3 its SPE. I think that's a very different --  
11:03:09 4 special purpose entity, the one through which  
11:03:13 5 securitizations were done.

11:03:15 6 Q. Right. But when we're talking about --  
11:03:18 7 I just want to understand your understanding. The  
11:03:23 8 obligation that's owed to the company when the  
11:03:26 9 company is insolvent, you tell us your  
11:03:29 10 understanding is that's now an obligation to the  
11:03:31 11 creditors.

11:03:33 12 Oakwood had in 2000, 2001 many  
11:03:37 13 different kinds of creditors; isn't that right?

11:03:41 14 MR. CASTANARES: Objection to form.

11:03:43 15 A. I'm not -- they had various creditors,  
11:03:46 16 yes.

11:03:47 17 Q. They had owners of publicly traded  
11:03:50 18 bonds, right?

11:03:51 19 A. Yes.

11:03:51 20 Q. They had trade creditors, right?

11:03:54 21 A. Yes.

11:03:54 22 Q. They had employees, right?

11:03:56 23 A. Yes.

11:03:57 24 Q. They had as I remember some other kinds  
11:04:02 25 of instruments other than publicly traded bonds.

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11:04:05 2 There were some private notes; is that  
11:04:07 3 right?

11:04:08 4 A. I believe that's the case, industrial  
11:04:11 5 revenue bonds or something like that.

11:04:14 6 Q. And is the fiduciary duty that you're  
11:04:16 7 describing, does it run to all of those creditors  
11:04:19 8 or does it run to some particular subsets of them?

11:04:22 9 MR. CASTANARES: Objection to the  
11:04:22 10 question as calling for a legal conclusion.

11:04:27 11 A. Again, that does require a legal  
11:04:31 12 opinion. I can tell you that my understanding was  
11:04:37 13 specifically with regard to the bondholders.  
11:04:44 14 There may have been some fiduciary obligation to  
11:04:50 15 other creditors that I -- we did not talk about  
11:04:55 16 that. I can think of economic reasons why that  
11:04:58 17 would make sense, but I don't have an opinion  
11:05:02 18 about that.

11:05:07 19 Q. So would it be fair to say on the basis  
11:05:26 20 of the discussion we've had that what you were  
11:05:29 21 actually asked to assume -- the assumption that  
11:05:32 22 you actually made here in your report is that --  
11:05:37 23 and I'm looking here again at Roman numeral V.A,  
11:05:40 24 and I've just edited it a bit based on our  
11:05:45 25 discussion -- that you were asked by counsel to

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11:05:46 2 assume that from 2000 onward CSFB owed Oakwood's  
11:05:52 3 bondholders a fiduciary responsibility?

11:05:54 4 MR. CASTANARES: Objection to form.

11:05:57 5 A. Well, those were the only creditors  
11:05:59 6 that we talked about. It may well be that they  
11:06:03 7 had other creditors in mind as well, I can't speak  
11:06:10 8 to -- I never raised that question.

11:06:12 9 Q. Okay. But --

11:06:15 10 A. So my understanding was that the  
11:06:17 11 specific -- that the assumption talked  
11:06:23 12 specifically about the bondholders. It may be  
11:06:28 13 inference have extended to other creditors, but  
11:06:32 14 that I don't know.

11:06:33 15 Q. Okay. But in any event where the  
11:06:36 16 assumption on page 4 of your report, Oakwood and  
11:06:40 17 its creditors, do I correctly understand that what  
11:06:47 18 the assumption you were asked to make was there  
11:06:50 19 was no difference there, that is, the duty was  
11:06:53 20 owed to Oakwood's creditors?

11:06:56 21 MR. CASTANARES: Objection to form.

11:06:59 22 A. Well, we had a number of discussions.  
11:07:07 23 I can't recall exactly what the evolution of those  
11:07:12 24 discussions were, but I do recall -- I do recall  
11:07:27 25 my comments, which was that it would make economic

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sense for -- to the extent there's a fiduciary obligation to security holders, that that obligation would shift depending on the solvency of the company. That for a solvent company the obligation would be to the shareholders and when the company became insolvent that the obligation -- it would make economic sense for that obligation to shift to the creditors.

And I pointed to a large academic literature explaining the different -- the ways in which incentives change, depending on whether you're dealing with a solvent or insolvent company. And why it would make economic sense given the shift in incentives for a company that is insolvent, why it would make sense to shift any fiduciary obligation to creditors and away from shareholders.

Q. And that shift would be to creditors of any sort, not just security holders; is that right?

MR. CASTANARES: Objection to form. It calls for a legal conclusion.

A. That's correct. From the standpoint of the academic literature we don't distinguish

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11:08:54 2 between different types of debt holders. We talk  
11:08:58 3 about debt holders in general.

11:09:04 4 I can't speak to other liabilities --  
11:09:07 5 holders of other liabilities, such as employees  
11:09:09 6 and the like, let's say unpaid taxes, and so on.  
11:09:13 7 I think that really does require some legal  
11:09:16 8 opinion. The academic literature itself deals  
11:09:19 9 only with debt in a generic sense.

11:09:29 10 Q. But again, to look at your sentence in  
11:09:31 11 Section V.A where you wrote Oakwood and its  
11:09:37 12 creditors, that's as we now look at it redundant,  
11:09:44 13 isn't it, you're really meaning to refer to  
11:09:47 14 Oakwood's creditors?

11:09:49 15 MR. CASTANARES: Objection to form.

11:09:50 16 A. Given the assumption of insolvency,  
11:09:54 17 that's correct.

11:09:55 18 Q. Okay. Now, you've made reference to  
11:10:07 19 the academic literature around this subject of the  
11:10:09 20 movement of fiduciary responsibility.

11:10:10 21 It's fair to say, isn't it, that that  
11:10:13 22 academic literature in the main addresses the  
11:10:18 23 fiduciary obligations of directors?

11:10:26 24 A. I believe that the real emphasis is on  
11:10:31 25 managers and --

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11:10:32 2 Q. Managers?

11:10:33 3 A. -- as well as directors. I believe if  
11:10:35 4 you look at the literature it primarily talks  
11:10:39 5 about managers.

11:10:43 6 Q. To whom do managers of a corporation  
11:10:45 7 report and from whom do they take instruction?

11:10:52 8 A. Well, the CEO reports to the board of  
11:10:56 9 directors and takes instructions -- often as not  
11:11:03 10 gives instructions to the board of directors. The  
11:11:06 11 CEO typically sits on the board of directors, many  
11:11:08 12 times as chairman of the board. Other managers  
11:11:12 13 would report to the CEO and only report to the  
11:11:16 14 board, insofar as the board specifically requests  
11:11:22 15 them to report to it.

11:11:23 16 Q. All right. If you think about the  
11:11:25 17 academic literature that you've been describing  
11:11:27 18 with respect to the shift of fiduciary  
11:11:29 19 responsibility, can you point me to any of that  
11:11:33 20 literature which addresses -- which suggests that  
11:11:40 21 third parties, that is, not managers or directors  
11:11:46 22 of the corporation, have fiduciary duties that  
11:11:48 23 shift in this way to create fiduciary duties to  
11:11:52 24 creditors.

11:11:53 25 A. No, I cannot.

\* \* \*

ACKNOWLEDGEMENT OF DEPONENT

I, Alan C. Shapiro, do hereby  
acknowledge that I have read and examined the  
foregoing testimony, and the same is a true,  
correct and complete transcription of the  
testimony given by me, and any corrections appear  
on the attached Errata sheet signed by me.

10/7/07

(DATE)



(SIGNATURE)

1  
2 WITNESS: Alan C. Shapiro

DATE(S): 10/4/07, 10/7/07

3 CASE: OHC Liquidation Trust V. Credit Suisse et al

I wish to make the following changes, for the following reasons:

5 PAGE LINE 60 22

CHANGE FROM: operations and

6 CHANGE TO: operations, and

7 REASON: changes the intended meaning

158 6 CHANGE FROM: debt

8 CHANGE TO: equity

9 REASON: I misspoke. I was talking about equity, not debt

163 21 CHANGE FROM: CRISA

10 CHANGE TO: CRSP

11 REASON: That's the correct abbreviation

164 11 CHANGE FROM: CRISA

12 CHANGE TO: CRSP

13 REASON: Correct abbreviation.

166 8 CHANGE FROM: findings

14 CHANGE TO: fillings

15 REASON: I believe the court stenographer misunderstood me.

166 21 CHANGE FROM: 2001 just

16 CHANGE TO: 2001. Just

17 REASON: Misunderstanding by stenographer

CHANGE FROM: \_\_\_\_\_

18 CHANGE TO: \_\_\_\_\_

19 REASON: \_\_\_\_\_

CHANGE FROM: \_\_\_\_\_

20 CHANGE TO: \_\_\_\_\_

21 REASON: \_\_\_\_\_

CHANGE FROM: \_\_\_\_\_

22 CHANGE TO: \_\_\_\_\_

23  
24 Subscribed and sworn to before me this \_\_\_\_\_ day  
25 of \_\_\_\_\_, 2007.



1  
2 WITNESS: \_\_\_\_\_

DATE (S): \_\_\_\_\_

3 CASE: \_\_\_\_\_

I wish to make the following changes, for the  
4 following reasons:

5 PAGE LINE \_\_\_\_\_

CHANGE FROM: \_\_\_\_\_

6 CHANGE TO: \_\_\_\_\_

7 REASON: \_\_\_\_\_

CHANGE FROM: \_\_\_\_\_

8 CHANGE TO: \_\_\_\_\_

9 REASON: \_\_\_\_\_

CHANGE FROM: \_\_\_\_\_

10 CHANGE TO: \_\_\_\_\_

11 REASON: \_\_\_\_\_

CHANGE FROM: \_\_\_\_\_

12 CHANGE TO: \_\_\_\_\_

13 REASON: \_\_\_\_\_

CHANGE FROM: \_\_\_\_\_

14 CHANGE TO: \_\_\_\_\_

15 REASON: \_\_\_\_\_

CHANGE FROM: \_\_\_\_\_

16 CHANGE TO: \_\_\_\_\_

17 REASON: \_\_\_\_\_

CHANGE FROM: \_\_\_\_\_

18 CHANGE TO: \_\_\_\_\_

19 REASON: \_\_\_\_\_

CHANGE FROM: \_\_\_\_\_

20 CHANGE TO: \_\_\_\_\_

21 REASON: \_\_\_\_\_

CHANGE FROM: \_\_\_\_\_

22 CHANGE TO: \_\_\_\_\_

23  
24 Subscribed and sworn to before me this 7<sup>th</sup> day  
of October, 2007.

# **Exhibit "F"**

MYLES STANDISH

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

COPY

-----X  
In Re: : Chapter 11  
OAKWOOD HOMES CORPORATION, : Case No. 02-13396  
et al., : (PJW)  
: Jointly Administered  
:   
Debtors. :   
:   
OHC LIQUIDATION TRUST, :   
:   
Plaintiff, :   
:   
v. : Adv. Proc. No.  
: 04-57060 (PJW)  
CREDIT SUISSE FIRST BOSTON, :   
a Swiss banking corporation, :   
CREDIT SUISSE FIRST BOSTON :   
LLC, a Delaware limited :   
liability corporation, CREDIT :   
SUISSE FIRST BOSTON, INC., :   
CREDIT SUISSE FIRST BOSTON :   
(U.S.A.), INC., a Delaware :   
corporation and a wholly :   
owned subsidiary of CREDIT :   
SUISSE FIRST BOSTON, INC., :   
the subsidiaries and :   
affiliates of each, and :   
DOES 1 through 100, :   
Defendants. :   
-----X

Videotape Deposition of MYLES STANDISH  
(Taken by Defendants)  
Winston-Salem, North Carolina  
September 21, 2006

Prepared by: K. Denise Neal  
Registered Professional Reporter  
Notary Public

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1 answer that without reviewing the complaint  
2 itself.

3 Q. (By Mr. Osnato) Fair enough. Now, in one  
4 of your previous answers you alluded to the  
5 assumption program and specifically the allegations  
6 and the counterclaims relating to it; is that right?

7 A. Yes. I did.

8 Q. Is there some aspect of those allegations  
9 you believe to be incorrect?

10 A. My general recollection of the allegations  
11 with respect to the assumption program were that  
12 First Boston caused management to enter into the  
13 assumption program and that they did so in order to  
14 kind of let's say keep the ball rolling to enable the  
15 securitization program to continue in place for a  
16 period of time longer than perhaps it otherwise would  
17 have.

18 While First Boston was certainly aware of  
19 the loan assumption program and what Oakwood was  
20 doing with respect to the loan assumption program, I  
21 disagreed with the idea that First Boston was the  
22 driving force behind the loan assumption program if I  
23 recall the allegations correctly.

24 Q. Uh-huh.

25 A. So I did -- I recall when I read the

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1 complaint disagreeing with that aspect of it.

2 Q. Do you continue to disagree with that  
3 aspect of the complaint?

4 A. To the extent I recall it correctly, yes.

5 MR. OSNATO: I have here two copies of the  
6 counterclaims. I see no need to mark these as  
7 exhibits.

8 MR. CASTANARES: Okay.

9 Q. (By Mr. Osnato) Mr. Standish, I've just  
10 handed you a copy of the counterclaims that were  
11 filed in this lawsuit, and I believe you testified  
12 earlier that at some point after they were filed you  
13 first reviewed them; is that correct?

14 A. That's correct.

15 Q. Okay. I'm going to draw your attention to  
16 page 11 of the counterclaims.

17 A. I'm there.

18 Q. And in particular heading number two,  
19 which reads CSFB encouraged debtors to aggressively  
20 use the loan assumption program. Do you agree with  
21 that statement?

22 A. I do not.

23 Q. Was the decision to institute the loan  
24 assumption program made exclusively by Oakwood?

25 A. Well, as I said, I think CSFB knew what we

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1 were doing and I believe that Fiachra -- it would  
2 have been discussed with Fiachra prior to doing it to  
3 make sure there would be no adverse effect on our  
4 securitization program; but as far as the decision to  
5 -- well, let me -- let me back up.

6 Your -- the question really is based on an  
7 incorrect factual assumption and that is that in -- I  
8 believe in 2000 or 2001, whatever time period we're  
9 talking about that we instituted a loan assumption  
10 program, there had always been a loan assumption  
11 program at Oakwood Acceptance Corporation. The --  
12 and it's fairly typical in the industry.

13 What we did was there was a decision to  
14 expand to be somewhat more aggressive in the loan  
15 assumption program sometime in the 2000, 2001 time  
16 frame. And that's what I'm really talking about.  
17 And I'm sure before expanding that program it was  
18 discussed with Fiachra, but as far as the decision to  
19 go ahead and expand that program, that decision was  
20 made by Oakwood management.

21 Q. And to your knowledge was the Oakwood  
22 board of directors apprised of Oakwood's use of the  
23 assumption program?

24 A. Yes. And the world was apprised of the  
25 assumption program. I think that it was in all of

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1 our public documents, how many repossessed homes had  
2 we had, how many -- versus how many homes awaiting  
3 assumption there were. If you looked at our 10-Qs  
4 and 10-Ks and press releases, it was out there for  
5 the world to see.

6 Q. What is the or was the purpose of the loan  
7 assumption program as it was used by Oakwood?

8 A. There were two purposes. One was a loss  
9 mitigation purpose that if you can find a borrower to  
10 go ahead and take over a loan that would otherwise  
11 result in a repossessed home, then you, number one,  
12 avoid the repossession. You avoid a lot of the  
13 expenses typically associated with a repossession,  
14 and so it's a -- it's a loss mitigation technique.

15 The other factor which caused Oakwood to  
16 more aggressively utilize the loan assumption program  
17 in the 2000, 2001 time frame was it increased our  
18 liquidity. It increased the liquidity from the  
19 standpoint that that loan had already been financed  
20 in a securitization.

21 Q. Uh-huh.

22 A. If I can find somebody to assume that  
23 loan, then it can stay financed in that  
24 securitization so I don't have to look for financing  
25 for that home.

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1 anyone at Oakwood that two percent was the right  
2 number?

3 A. I do not.

4 Q. Do you think Credit Suisse had a conflict  
5 of interest in the Lotus transaction?

6 A. In a legal sense?

7 Q. Any sense.

8 A. The -- certainly there's some inherent  
9 conflict of interest that's, you know, somewhat  
10 insurmountable when they're dealing with a company  
11 like us that they've represented for a period of time  
12 as well as a company like Berkshire Hathaway that  
13 they often sell products to and who certainly could  
14 have a big appetite for products that they want to  
15 make sure that they're happy as well.

16 So there's somewhat of a -- of an inherent  
17 conflict there. That was at the time something that  
18 we would have been aware of. Since this time I  
19 understand that Berkshire Hathaway also owned a  
20 significant amount of our debt, which I understand  
21 First Boston knew about at that time but they did not  
22 inform us about that at that time.

23 And I'm not sure why we were not informed  
24 of that because again, as I said, you know, there's  
25 some trepidation anytime you do something like this



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1 that you have the 800-pound gorilla in your tent, but  
2 I would have liked to have known. I don't know if it  
3 would have made any difference, but I would have  
4 liked to have known that he was already in our tent.

5 Q. Uh-huh. But the board would have approved  
6 the deal even if it had been disclosed that Berkshire  
7 Hathaway owned some public bonds; isn't that right?

8 MR. CASTANARES: Objection to form.

9 THE WITNESS: I don't know. I think that  
10 there may have been certainly some inquiry as to  
11 what the level of interest and what the -- what  
12 the potential plan of Berkshire Hathaway was had  
13 we known that.

14 Q. (By Mr. Osnato) Do the terms that are set  
15 out in the paragraph in Exhibit 204 that we've been  
16 looking at represent the final terms of the deal as  
17 you understood it?

18 A. I do not know.

19 Q. Do you believe those terms as reflected in  
20 204 to be fair?

21 A. Well, I believe that they were the best  
22 price that we -- that we thought that we could get at  
23 the time.

24 Q. After the Lotus securitization transaction  
25 closed, did you have any dealings with Berkshire

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1 Hathaway thereafter apart from any discussions as  
2 part of the bankruptcy?

3 A. As I said, Mr. Millard came down to visit  
4 us sometime in I believe the fall of 2001. Really,  
5 the next -- the next time that I can remember having  
6 any dealings with Berkshire Hathaway was when we  
7 decided to eliminate or curtail the loan assumption  
8 program, and we had a meeting with Mr. Buffett and  
9 Mr. Millard in Omaha at the Berkshire offices to give  
10 them an update on that.

11 Q. And do you recall who requested that  
12 meeting?

13 A. Well, the request to Berkshire Hathaway  
14 went through First Boston. I would think that  
15 Fiachra would have talked to Tom Connor at First  
16 Boston and have Tom arrange a meeting.

17 Now, I'm not sure where the -- I'm not  
18 sure whose idea that we needed a meeting with  
19 Berkshire Hathaway was, whether it was something  
20 after we talked with Fiachra and talked about the  
21 changes to the loan assumption program that he said,  
22 you know, we don't want to surprise the guys in Omaha  
23 or whether it's something that we suggested to him.  
24 I don't recall that.

25 Q. But your recollection is that the purpose

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1 of the meeting was to discuss the consequences of the  
2 loan assumption program with Berkshire Hathaway?

3 A. That was the -- that was the general  
4 purpose of the meeting, yes.

5 Q. Okay. And were you at the meeting?

6 A. I was.

7 Q. And did you speak at the meeting?

8 A. I did.

9 Q. Did you make a presentation?

10 A. I walked through a brief presentation,  
11 yes.

12 Q. Okay. And what was the subject matter of  
13 your presentation?

14 A. It was -- as I recall, it was mostly about  
15 the loan assumption program and the impact that this  
16 was going to have on the Lotus transaction. There  
17 was probably also material in there that gave them a  
18 general update on the -- on the business.

19 Q. How did the assumption program impact the  
20 Lotus transaction?

21 A. It devastated it.

22 Q. In what sense?

23 A. Well, rather than Oakwood assuming the  
24 losses or mitigating the losses, we now had half of  
25 our foreclosures being sold into the wholesale

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1 market. Whereas traditionally how we had disposed of  
2 our repos had been either through assumptions or  
3 through repo refinances where with assumptions the  
4 securitization didn't take any hit, with repo  
5 refinances over the broader period of time we were  
6 having a recovery rate of about 80 percent, although  
7 that had deteriorated some by July of 2002 or June of  
8 2002.

9 When we started wholesaling repos at that  
10 point in time the repo market, the wholesale market  
11 for repos, was the worst it had ever been. So the  
12 losses that we were incurring, our recovery rate was  
13 only about 20 percent, give or take a few, on those  
14 wholesale units and the -- and the -- that loss gets  
15 passed on to the securitizations.

16 So Oakwood as I discussed before would  
17 take the first loss from the standpoint that it  
18 wouldn't get paid a servicing fee, but the next loss,  
19 it's the residuals and the B2s, which is what  
20 Berkshire owned. So there was little immediate  
21 impact because the Lotus transaction called for a  
22 reserve fund to be built up. And there was a reserve  
23 fund built up, but after a few months I think that  
24 the Berkshire cash flows decreased dramatically.

25 Q. And do you recall the reaction of

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1 Berkshire to this news at the meeting?

2 A. I think they understood what we had to say  
3 and understood why we were doing what we were doing.

4 Q. Uh-huh.

5 A. They asked some general questions about  
6 the business, where we were headed, but it was  
7 overall a fairly pleasant meeting.

8 Q. And do you recall how you or anyone else  
9 from Oakwood responded when asked where you were  
10 headed?

11 A. I think we explained what our business  
12 strategy was going forward, what the obstacles were,  
13 where the industry was.

14 Q. Uh-huh.

15 A. As far as specifically saying where we  
16 were headed, I think we just talked about what the --  
17 what the issues were.

18 Q. Was there any discussion at the meeting of  
19 a bankruptcy filing at that point in time?

20 A. Warren Buffett made a comment as he looked  
21 at the numbers. He said, well, you know, it's pretty  
22 simple. Either you start making money or you're  
23 going to have to file for bankruptcy at some point in  
24 time, and we agreed with that comment.

25 Q. Did you tell him that you intended to

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1 start making money?

2 A. No.

3 Q. Was that your view at the time?

4 A. My view at the time was that we would  
5 probably have to file for bankruptcy.

6 Q. As of the summer of 2002?

7 A. Yes.

8 Q. And do you know if the board shared that  
9 sentiment?

10 A. I don't know that the board necessarily  
11 agreed with that sentiment or disagreed with that  
12 sentiment. I know that at some point in time, I  
13 believe it was probably June of 2002, in that time  
14 frame I advised the board that I thought it was  
15 prudent to obtain -- to retain bankruptcy counsel,  
16 and they agreed with that.

17 Q. Apart from -- strike that. In addition to  
18 Mr. Millard and Mr. Buffett and yourself, who else  
19 attended the meeting in Omaha in the summer of 2002?

20 A. Fiachra, Tom Connor, Bob Smith and Doug  
21 Muir.

22 Q. Did Credit Suisse have a speaking role at  
23 this meeting?

24 A. I think they spoke, yes. They didn't have  
25 a main speaking role, I don't think.

MYLES STANDISH

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1 Q. Uh-huh. You testified earlier about a  
2 warehouse facility that had been provided by Bank of  
3 America?

4 A. Yes.

5 Q. At some point in time did that facility  
6 terminate?

7 A. That facility, Bank of America applied  
8 increasing pressure to us to get out of that  
9 facility.

10 Q. Uh-huh.

11 A. It did not ever terminate, although I  
12 think it would have terminated in -- by its terms in  
13 September of 2002 --

14 Q. Uh-huh.

15 A. -- I believe. But when we went to the  
16 Credit Suisse facility, that Bank of America facility  
17 had not terminated.

18 Q. And why if you know did Bank of America  
19 place pressure on Oakwood with respect to the B of A  
20 facility?

21 A. I'm not really sure what their motivation  
22 was. I think at the time Bank of America had been  
23 going through some financial issues and was cutting  
24 back on some of their exposures, but I -- I can't  
25 tell you any more than that.

MYLES STANDISH

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1 did you have any more interactions with either Mr.  
2 Buffett or Mr. Millard before the bankruptcy filing  
3 in November?

4 A. I think on the day of the bankruptcy  
5 filing I had several E mails from Mark Millard, but  
6 other than that, no.

7 Q. Okay. And do you know if Berkshire  
8 Hathaway ultimately came to support the filing by  
9 Oakwood?

10 A. I was told -- I can't recall exactly when  
11 we filed, but I was told on the morning of  
12 November 15th I believe by Jared Felt that Berkshire  
13 had supported our filing and we issued a press  
14 release sometime during that morning, which  
15 essentially said that without Berkshire's name being  
16 on the press release.

17 I later I believe got an E mail from Mark  
18 Millard probably around 3:00 o'clock that afternoon  
19 asking me what was going on, that he didn't think  
20 that we were going to file until Monday and that  
21 Berkshire had not yet supported our plan, although he  
22 thought that they would. So when we filed I thought  
23 we had Berkshire's support, but according to Mark's  
24 communication to me we did not have their support at  
25 that time.



MYLES STANDISH

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1 Q. I want to talk about the services that  
2 Credit Suisse provided to Oakwood under the August  
3 2002 financial advisory contract.

4 A. Yes.

5 Q. And I take it from some of your previous  
6 answers that you were less than satisfied with some  
7 of the things that Credit Suisse did; is that right?

8 A. That's correct.

9 Q. Can you tell me what it is that you were  
10 dissatisfied with in the work by Credit Suisse?

11 A. I don't believe that Credit Swiss ever  
12 understood the financial difficulty that we were in.  
13 As I mentioned to you earlier, there were a couple of  
14 times when Credit Suisse advised us to delay a  
15 bankruptcy filing. One time was on the flight back  
16 after visiting Berkshire Hathaway in the middle of  
17 October and one was the Friday before we filed.

18 Both times Credit Suisse indicated that we  
19 should consider putting off the filing for a period  
20 of time. Both of those times both Doug and I told  
21 them that we didn't have an option to put off the  
22 filing past -- that we were going to be lucky to get  
23 to November 15 when we were planning the filing. We  
24 didn't have the option to go any longer. I think at  
25 the time by November 8th, the Friday before we filed,

MYLES STANDISH

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1 Credit Suisse had done virtually nothing in  
2 connection with obtaining a DIP other than Jared went  
3 down to a meeting at Foothill which he arrived at  
4 about a half an hour or 45 minutes late and he popped  
5 in and he popped out. All of the work that was done  
6 with Foothill to the extent I know of it was done by  
7 FTI as well as the company.

8 I think that -- I don't think that Jared  
9 even contacted any other potential DIP lender until  
10 the Monday of our filing, if he did it that soon. I  
11 was repeatedly advised that there would not be a  
12 problem in getting a waiver for the warehouse. That  
13 did, in fact, turn out to be a significantly  
14 problematic manner -- matter and, in fact, we had to  
15 basically shut down our lending for a period of time  
16 after the filing.

17 There was no contact of any other  
18 warehouse lender, potential warehouse lender by First  
19 Boston prior to the filing because presumably they  
20 felt that we would get a waiver, which we did not on  
21 a timely basis. The first time anyone from First  
22 Boston showed up to do any due diligence with respect  
23 to a waiver of the warehouse was when Fiachra, Jared  
24 and Tom Irwin showed up in our offices on the night  
25 of November 14th, the day before we filed.

MYLES STANDISH

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1 I did not know nor did anyone else at  
2 Oakwood know that anyone from First Boston was even  
3 coming down until Fiachra informed me that they were  
4 coming down just a couple of hours or he may have  
5 actually been on the way to catch the plane at that  
6 time. Having basically starting diligence on the  
7 renewal of the warehouse the day before -- the night  
8 before we filed and the next day was significantly  
9 disruptive at a time when we were trying to negotiate  
10 a DIP with a new lender that FTI had brought to the  
11 scene.

12 Having your financial advisor with no  
13 notice suspend fundings under the warehouse for a  
14 reason that I've never been able to know the week of  
15 filing was disruptive. And being told that there  
16 would be no filings -- no further fundings  
17 essentially until further notice on the day that  
18 you're filing was certainly disruptive. Those are  
19 the major concerns that come to mind right now.

20 Q. Okay. Is there anything else that comes  
21 to mind?

22 A. Not at the moment.

23 Q. Okay. So to be clear, you were  
24 dissatisfied with --

25 A. There is -- there is one other thing that

MYLES STANDISH

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1 comes to mind. The week -- I believe it was the week  
2 before we filed or it may have been the Monday of the  
3 week that we were -- that we filed, I received a call  
4 from Fiachra as I was driving into work, so about at  
5 7:30 or 8:00 o'clock in the morning, that advised me  
6 that CSFB's legal department was working on matters  
7 but they thought that they would have a problem being  
8 retained as our financial advisor after we filed for  
9 bankruptcy because of potential conflicts with the  
10 fact that they had served as underwriters for us.

11 Fiachra said that there was a technical  
12 argument that because they had served as underwriter  
13 for a bankruptcy remote entity, that perhaps they  
14 could be retained as a financial advisor, but he  
15 couldn't give me any assurance as to that. That was  
16 the first time that had ever been mentioned to me.

17 Q. Focusing only on the DIP issue, at some  
18 point after the filing on November 15th Oakwood did,  
19 in fact, obtain sufficient DIP financing; isn't that  
20 right?

21 A. We obtained DIP financing, yes.

22 Q. And who provided that financing?

23 A. Greenwich Capital, Ranch Capital and  
24 Berkshire Hathaway.

25 Q. And do you recall the date upon which that

# **Exhibit "G"**

**COPY**

Page 1

CLARENCE WALKER  
UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

-----X

In Re:

OAKWOOD HOMES CORPORATION,  
et al.,

Debtors.

Chapter 11

Case No. 02-13396 (PJW)

-----X

OHC LIQUIDATION TRUST,

Plaintiff,

v.

ADV. Proc.No. 04-57060 (PJW)

CREDIT SUISSE FIRST BOSTON, a  
Swiss banking corporation,  
CREDIT SUISSE FIRST BOSTON  
LLC, a Delaware limited  
liability corporation, CREDIT  
SUISSE FIRST BOSTON, INC.,  
CREDIT SUISSE FIRST BOSTON  
(U.S.A.), INC., a Delaware  
corporation and a wholly owned  
subsidiary of CREDIT SUISSE  
FIRST BOSTON, INC., the  
subsidiaries and affiliates of  
each, and DOES 1 through 100,  
Defendants.

-----X

December 12, 2006

1:04 p.m.

1 CLARENCE WALKER

2 filed for bankruptcy, is it your view, Mr.  
3 Walker, that the board of directors of Oakwood  
4 was comprised of competent and qualified  
5 directors who acted in the company's best  
6 interest?

7 A. Yes.

8 MS. CHOW: Objection as to form. I'm  
9 sorry, Mr. Walker, if you could perhaps give me  
10 an opportunity to raise the objection,  
11 especially with the doing this by telephone.  
12 Hopefully the court reporter can hear the  
13 objection before the testimony.

14 I apologize, I didn't mean to  
15 interrupt.

16 THE WITNESS: I will undertake to  
17 pause after the question.

18 MS. CHOW: Thank you.

19 BY MR. OSNATO:

20 Q. And, Mr. Walker, if I was to ask you  
21 the same question for the year 2001, would your  
22 answer also be yes?

23 MS. CHOW: Same objection.

24 A. Yes.

25 Q. And for the year 2000?

1 CLARENCE WALKER

2 MS. CHOW: Same objection.

3 Q. Is your --

4 A. In the year 2000 the issue of  
5 bankruptcy was not on the horizon at all.

6 Q. Thank you. Am I correct, Mr. Walker,  
7 that the Oakwood board of directors would meet  
8 on a regular basis?

9 A. That's correct.

10 Q. And again focusing on the period from  
11 2000 through 2002, approximately how many times  
12 per year did the board meet?

13 A. In that period the board met more  
14 regularly than it normally had in the past. The  
15 board prior to that time had met approximately  
16 four times a year. During that period the board  
17 met if not on a monthly basis, even on a more  
18 frequent basis than monthly because of the  
19 necessity of monitoring the situation that was  
20 developing fairly fast.

21 Q. Focusing on the year 2002 for the  
22 moment, in addition to yourself as an outside  
23 director, do you recall the names of the other  
24 outside directors who sat on the board?

25 A. Yes.



CLARENCE WALKER

Q. Who were they?

A. Dennis Meyer of Washington, D.C.  
Kermit Phillips of Greensboro, North Carolina.  
Michael Weaver, also of Greensboro, North  
Carolina. Fay Vincent of New York, the State of  
New York. I'm not certain just where his  
principal residence was. His name is Francis T.  
Vincent.

Roger Schipke who at the time was in  
Florida. Sabin C. Streeter, S-T-R-E-E-T-E-R, of  
New York. I think his home is in Chappaqua.  
His work was in New York City.

I'm trying to think if there were  
others. I think there certainly were others  
during that period but right now they don't  
occur to me. Those were the outside directors,  
that is, the nonemployee directors.

Q. Thank you. And do you believe that  
the individuals that you have just identified  
provided Oakwood with disinterested and  
impartial advice during their tenure on the  
Oakwood board?

MS. CHOW: Objection as to form.

A. Yes.

CLARENCE WALKER

MS. CHOW: Objection to the form of  
the question.

A. Yes, you are correct.

Q. Was the board of directors --

A. I'm sorry, I have lost you.

Q. I'm sorry, can you hear me now?

A. No, I can hear you very faintly.

Q. Is this better?

A. Suddenly your voice has become  
distant.

Q. Is this any better?

A. Much better.

Q. Okay. Good. I will not move.

Am I correct, Mr. Walker, that the  
board of directors was kept apprised by senior  
management of developments in the securitization  
market?

MS. CHOW: Object to the form of the  
question.

A. You are correct. The board was kept  
advised in a general way by both senior  
management and the audit committee, and the  
audit committee was kept advised in a more -- in  
more depth by Doug Muir.

1 CLARENCE WALKER

2 Q. Am I correct that the board of  
3 directors approved the use of securitizations by  
4 the company to generate liquidity?

5 MS. CHOW: Object to the form of the  
6 question.

7 A. You are correct in this sense. The  
8 securitization program had been an integral part  
9 of the company's operation for a long time. I  
10 don't recall when it was first initiated, but it  
11 certainly was not in this 2001-2002 period, it  
12 was earlier than that. And the board got  
13 continual reports about the status of the  
14 securitization and acquiesced in it.

15 Now, I don't think particular  
16 securitizations ever were presented to the board  
17 for its approval, but the board was fully aware  
18 of how the program operated, how it was doing,  
19 and at no time undertook to mandate the  
20 discontinuance of it.

21 Q. Thank you. I take it that your answer  
22 remains true for all of the year 2002?

23 A. That's correct.

24 Q. In your capacity as a director, do you  
25 have any reason to believe that the

1 CLARENCE WALKER

2 securitizations engaged in by Oakwood were a  
3 harmful financing technique?

4 A. No.

5 MS. CHOW: Object to the form of the  
6 question.

7 Q. I'm sorry, your answer was, sir?

8 A. The answer to the question was no.

9 Q. Thank you.

10 You also mentioned, Mr. Walker, the  
11 warehouse facility. You have provided us with a  
12 brief description of that facility.

13 Am I correct that the board was kept  
14 apprised of Oakwood's use of the warehouse  
15 facility?

16 A. Yes, you are correct. The warehouse  
17 facility became an integral part of the whole  
18 securitization process and the board was kept  
19 aware of that as a part of the whole  
20 securitization process.

21 Q. To your knowledge did the board  
22 approve of Oakwood's use of the warehouse  
23 facility?

24 MS. CHOW: Objection to the form of  
25 the question.

1 CLARENCE WALKER

2 A. There was never any specific action by  
3 the board in which it approved the use of the  
4 warehouse facility. But if you use "approved"  
5 in the generalized sense of acquiescing after  
6 having been informed of this operation, the  
7 answer is yes.

8 Q. Thank you. Did Credit Suisse have the  
9 ability in your view to dictate corporate policy  
10 to the board of directors?

11 MS. CHOW: Objection to the form of  
12 the question.

13 A. Absolutely not.

14 Q. Did Credit Suisse have the ability to  
15 dictate to senior management policy?

16 MS. CHOW: Object to the form of the  
17 question.

18 A. I'm not able to answer that.

19 Q. Fair enough. Did Credit Suisse have  
20 any representatives on the board of directors of  
21 Oakwood at any time during your tenure?

22 A. No.

23 Q. In your service on the board of  
24 directors, can you recall any instance in which  
25 Credit Suisse demanded that the board terminate

# **Exhibit "H"**

From: JHinshaw@OakwoodHomes.com  
 Sent: Monday, April 17, 2000 1:16 PM  
 To: fiachra.o'driscoll@csfb.com  
 Subject: FW: Changes to 2000-A loss for quarter and regular interest MTM; B-2 loss assumptions

Hello Fiachra. Hope all is going well. Please read the attached e-mail in your abundance of spare time. In a nut shell we are valuing all retained REMIC interest for the quarter and want to get your thoughts on our methodology. In summary we are marking the unguaranteed B-2's to fail cross-over at +850 and the guaranteed B-2's to fail cross-over at +1000. Please make note of item 5 below and let me know your thoughts. Thanks for your help.

-----Original Message-----

From: Doug Muir/Corp.Finance  
 Sent: Friday, April 14, 2000 4:57 PM  
 To: Bob Smith/Corp.Finance; Eric Burgess/Corporate Finance; Suzanne Wood/Corp.Finance; Derek Surette/OAC Acct.; Jeff Hinshaw/OAC Accounting  
 Subject: Changes to 2000-A loss for quarter and regular interest MTM; B-2 loss assumptions

In having a final look at the summary valuation page for 3/31/00, the following issues arose:

1. 99-C B-2 showed a positive mark-to-market ("MTM") of \$1.3 million, which looked very strange in comparison to negative MTMs on 99-D and 99-E. Turns out we priced 99-C B-2 at +850 at 3/31/00, same spread as 99-D and 99-E. We priced 99-C B-2 at closing at +1000, because 99-C B-2 was a guarantee bond and did not have sufficient credit support built in to sustain anything higher than a single-B rating exclusive of the OH guarantee. I asked Jeff Hinshaw to reprice 99-C B-2 at 3/31/00 at +1000, a single-B spread (instead of the +850 BB spread given us by CSFB), which has the effect of reducing the positive MTM from \$1.3 million to \$.3 million. As it happens, the 3/31/00 pricing yield (at +1000) is identical to the bond's yield at closing; the \$.3 million positive MTM arises from discount accretion, which has not been recorded for book purposes.
  2. 99-D and 99-E B-2s have negative MTMs of \$2.4 million and \$.8 million, respectively. 99-D B-2 was priced at +700 at closing, so it has suffered from spread widening to +850. 99-E B-2 was priced at +950 at closing, so it has benefited from spreads coming in since closing. Changed yields in benchmarks had little effect. Both bonds have been much more adversely affected by changing pricing assumption from "pass" to "fail" (insofar as the crossover tests are concerned) in accordance with CSFB's views on what the market view is on this right now. This leads to point 3 below. (Pass/fail does not affect the 99-C B-2 because it is a bullet structure.)
  3. In discussing item 2 above with Jeff, he pointed out that the loss recorded on the 2000-A deal is based upon a pass assumption on the B-2. This is not consistent with CSFB's advice on where the market is on this. Accordingly, I have had Jeff recompute assuming B-2 failure pricing, which reduces the B-2 issue price and increases the loss by \$1.1 million in the quarter. To recap, we now have a gross loss of \$11.1 million vs. \$10.0, and a loss in the quarter of \$2.4 vs. \$1.3 million on this deal.
  4. For some reason, the summary of regular interest values I have shows a negative MTM on the 2000-A of \$.7 million. This seems unlikely to have arisen only one day after closing on 3/30/00. Jeff is following up on this.
- Jeff, will you drop Fiachra an email indicating our spreads and pass/fail assumptions on all bonds in inventory (as adjusted) and get him to have a final look before we lock down the quarter? Ask him to email us back (so we'll have it for the file.) Might as well check in with him one more time in case he has changed his view on anything.
5. Last issue. All bonds have been priced from pricing models, not residual models. The

CSFB-00173796



former do not have losses modeled; the latter do. This implicitly says that a buyer assumes he is going to get paid all his principal (or alternatively, that a buyer has factored in the risk of not getting all his principal into his spread) in coming up with his price.

If we were to reprice these securities using the same models we use for valuation purposes, on at least some of them we are going to get a worse answer, because our loss assumptions will cause B-2 writedowns. I guess the real question is whether we should use the market's loss assumption in computing these values, or our assumption.

Jeff, in your email to Fiachra, ask him the above question and see what he says.

What I am trying to avoid is getting surprised down the road if we were somehow to have to change assumptions from the "market's" to "ours." Which view we take might affect the loss on 2000-A. (Jeff: What happens if we price the B-2 off the residual model in computing the 2000-A loss?)

One other thought on this is that the price of the bonds at 3/31/00 on a "no losses" vs. a "losses" basis may not be so different as one might expect. While the numbers may be pretty far apart on a purely mathematical basis, the reality may not be so different. What I mean is this: These wide B-2 spreads are in large measure a reflection of credit risk. If we have already modeled in a pretty bleak loss assumption in our B-2 valuation (and these assumptions result in an unrecovered writedown), the risk to a buyer is that losses are even worse than we've modeled, which is a lesser risk than what you have if you start from a no writedown position. In that case, maybe a tighter spread is indicated.

Know these subjects are exactly what you wanted to spend time thinking about this week!

Doug



EXHIBIT I REDACTED  
IN ITS ENTIRETY

EXHIBIT J REDACTED  
IN ITS ENTIRETY

EXHIBIT K REDACTED  
IN ITS ENTIRETY

EXHIBIT L REDACTED  
IN ITS ENTIRETY

EXHIBIT M REDACTED  
IN ITS ENTIRETY

EXHIBIT N REDACTED  
IN ITS ENTIRETY

EXHIBIT O REDACTED  
IN ITS ENTIRETY

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
Oakwood Homes Corporation, et al.,	)	Case No. 02-13396 (PJW)
	)	
Debtors.	)	Jointly Administered
	)	
OHC Liquidation Trust,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 07-0799 (JJF)
	)	
Credit Suisse (f/k/a Credit Suisse First Boston, a	)	
Swiss banking corporation), Credit Suisse	)	
Securities (USA), LLC (f/k/a Credit Suisse First	)	
Boston LLC), Credit Suisse Holdings (USA), Inc.	)	
(f/k/a Credit Suisse First Boston, Inc.), and Credit	)	
Suisse (USA), Inc. (f/k/a Credit Suisse First Boston	)	
(U.S.A.), Inc.), the subsidiaries and affiliates of	)	
each, and Does 1 through 100,	)	
	)	
Defendants.	)	
	)	

**CERTIFICATE OF SERVICE**

I, Kathryn S. Keller, of Campbell & Levine, LLC, hereby certify that on May 19, 2008, I caused a copy of the *Declaration of Whitman L. Holt in Support of Plaintiff's Answering Brief in Opposition to Defendants' Motion for Partial Summary Judgment*, to be served upon the individuals listed below via the method indicated.

Lee E. Kaufman, Esq. Russell C. Silberglied, Esq. Richards, Layton & Finger, P.A. One Rodney Square 920 North King Street Wilmington, DE 19801 <b>VIA HAND DELIVERY</b>	Mary K. Warren, Esq. Michael Osnato, Esq. J. Justin Williamson, Esq. Paul R. Wickes, Esq. Linklaters 1345 Avenue of the Americas Nineteenth Floor New York, NY 10105 <b>VIA FEDERAL EXPRESS</b>
---	---



Dated: May 19, 2008

CAMPBELL & LEVINE, LLC

/s/ Kathryn S. Keller

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